

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.3171 & 3172 of 2008
and M.P.No.1 of 2008

Division Manager
The Oriental Insurance Co. Ltd.
Vellore.

.. Petitioner
in both CRPs.

Vs.

Jothi

.. Respondent
in both CRPs.

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order dated 15.11.2007 made in I.A.Nos.848 and 849 of 2005 against the award passed in M.C.O.P.No.341 of 2004 on the file of the Subordinate Court, Cheyyar, Tiruvannamalai District.

For Petitioner : Mr.S.Arun Kumar

For Respondent : Batta due

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decretal order dated 15.11.2007 made in I.A.Nos.848 and 849 of 2005 against the award passed in M.C.O.P.No.341 of 2004 on the file of the Subordinate Court, Cheyyar, Tiruvannamalai District.

2. The petitioner is the second respondent and respondent is the claimant in M.C.O.P.No.341 of 2004 on the file of the Subordinate Court, Cheyyar, Tiruvannamalai District. The respondent filed the said claim petition claiming a sum of Rs.50,000/- as compensation for the injuries sustained by her in the accident that occurred on 14.11.2003. Notice was served on the petitioner. The petitioner and owner of the vehicle did not appear. They were set exparte and an exparte award was passed on 28.10.2004. The petitioner filed two applications in I.A.Nos.848 and 849 of 2005 to condone the delay of 227 days in filing the petition to set aside the exparte award and to set aside the exparte award.

3. The respondent filed counter affidavit denying all the averments made in the said applications and submitted that the

reason given by the petitioner is not a valid reason to condone the delay. The respondent filed E.P.No.68 of 2005 to execute the award and in the said execution petition, notice was ordered to the petitioner twice. The petitioner did not appear in the execution proceedings also and the Execution Court ordered attachment of bank account of the petitioner. The petitioner has filed the present applications by suppressing the pendency of the execution petition and order of attachment.

4. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the applications holding that the petitioner has not given valid reason for condonation of delay. Even though the petitioner received notice twice, they did not appear and they have come forward with the present applications, when the execution petition filed by the respondent was pending.

5. Against the order of dismissal dated 15.11.2007 made in I.A.Nos.848 and 849 of 2005 in M.C.O.P.No.341 of 2004, the present civil revision petitions are filed by the petitioner/Insurance company.

6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. From the materials on record, it is seen that the petitioner did not appear before the Tribunal and contest the claim petition after receipt of notice. A reading of the counter affidavit filed by the respondent reveals that the respondent has filed E.P.No.68 of 2005, notice was ordered in the said E.P. twice, the petitioner did not appear on the date of hearing in the E.P. and therefore, attachment of bank account was ordered. The petitioner has not mentioned these facts in the affidavit filed in support of the application to condone the delay in filing the petition to set aside the exparte award.

8. It is a well settled that application for condoning the delay must be considered liberally and length of delay is not a criteria. The Courts must see whether the parties have given acceptable and valid reason and the intention of the parties is bonafide and not malafide. The parties should not be shut down at the threshold itself and they must be given an opportunity to put forth their case on merits.

9. From the above facts, it is clear that the petitioner is not vigilant enough to put forth their case on merits. The reason given by the petitioner that notice received by them got mixed up with other bundles and therefore, they could not appear before the Tribunal to defend the case is not valid and acceptable reason. The petitioner has not mentioned E.P. proceedings as well as attachment of its bank account. Further, the petitioner has not taken any steps to serve the respondent/claimant in spite of the fact that the execution petition is pending for more than nine years. In the circumstance, there is no irregularity or illegality in the order of the learned Judge dated 15.11.2007 warranting interference by this Court.

10. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Speaking/Non-speaking order

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V.M.VELUMANI, J.

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To

The Subordinate Judge, Cheyyar
Tiruvannamalai District.



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